In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2011

VESTOL VERNON RAMSEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Texas, petitioner, a county commissioner, was convicted of using interstate facilities in furtherance of bribery, using the mails in furtherance of a fraudulent scheme, and conspiring to commit those offenses, in violation of 18 U.S.C. 371, 1341, and 1952. He was sentenced to concurrent terms of five years' imprisonment and fined $21,000. The court of appeals affirmed (Pet. App. A).

Petitioner contends that the mail fraud statute does not reach bribery schemes that defraud citizens of the honest services of their public officials, that the evidence was insufficient to establish the state offense of bribery, and that he was improperly denied the written statement of a prosecution witness.

1. Contrary to petitioner's contention (Pet. 4-5), it has long been understood that a scheme contemplating bribery of a public official is a scheme to defraud within the meaning of the mail fraud statute. See *United States* v. *Isaacs*, 493 F. 2d 1124 (C. A. 7), certiorari denied June 17, 1974 (Nos. 73-1650 and 73-1651); *Shushan* v. *United States,* 117 F. 2d 110 (C.A. 5). certiorari denied, 313 U.S. 574.

2. Petitioner's contention (Pet. 5-6) that the evidence was insufficient to establish the state offense of bribery raises an essentially factual issue that warrants no further review. The evidence was in any event sufficient. The evidence showed that petitioner was responsible for supervising voting machines in Harris County, Texas, and that he induced a manufacturer of voting machines doing business with the county to make secret payments to him through a third person. There was ample basis for the inference that the payments were "given and accepted so as to affect official action or inaction on some particular matter" (Pet. 6).

3. Petitioner also contends that he was entitled under the Jencks Act, 18 U.S.C. 3500, to production of the written statement of a prosecution witness. The statement had been dictated by the witness to his secretary, who transcribed it. The witness kept the statement in his briefcase, which he retained in his personal custody; the statement was not furnished to or seen by the prosecution or used by the government in any way, nor was it used by either the witness or his secretary (who also testified) for the purpose of refreshing their recollections (Tr. 664-667, 1295-1307). Since the statement was never "in the possession of the United States" (18 U.S.C. 3500(b)), it was not subject to production.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.